

“team.” The use of any other terms besides “team,” such as “associate,” “realty” or “group” is prohibited. The use of the name of a non-licensed individual in a team name is prohibited. For twelve months after the adoption of this regulation, teams that have changed their name to comply with this provision shall be entitled to state in advertisements under their new name that they were ‘formerly known as’ their prior team name.

2. Unlicensed team members. If any unlicensed individuals are named in advertising for a team, the advertisement must clearly and conspicuously state which individuals are real estate licensees and which ones are not.

### §175.26 Posting of business signs

For purposes of compliance with subdivision 3 of §441-a of Article 12 of the Real Property Law, in an apartment building where the posting of signs is not permitted in the lobby pursuant to the rules and regulations of the building, said sign must be posted on the corridor wall next to the entrance door of the dwelling unit or on the entrance door of the dwelling unit or on the entrance door of the dwelling unit in which the business is conducted.

### §175.27 Disclaimer

Nothing in this Part is intended to be, or should be construed as, an indication that a salesperson is either an independent contractor or employee of a broker.

## PART 176 APPROVAL OF REAL ESTATE COURSES

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### §176.1 Approved entities

Real estate courses and offerings may be given by any college or university accredited by the Commissioner of Education of the State of New York or by a regional accrediting agency accepted by said Commissioner of Education; public and private vocational schools; real estate boards; and real estate-related professional societies and organizations. No real estate course of study seeking approval may be affiliated with or controlled by any real estate broker, licensed salesperson, licensed or certified real estate appraiser, firm, or company or franchise, or controlled by a subsidiary of any real estate broker, real estate appraiser or franchise.

### §176.2 Request for approval of courses of study

Applications for approval to conduct courses of study to satisfy the requirements for licensed real estate salesperson and broker shall be made 60 days before the proposed course is to be conducted. The application shall be prescribed by the Department to include the following:

- (a) name and business address of the proposed school which will present the course;
- (b) if applicant is a partnership, the names and home addresses of all the partners of the entity;
- (c) if applicant is a corporation, the names and home addresses of persons who own five percent or more of the stock of the entity;
- (d) the name, home and business address and telephone number of the education coordinator that will be responsible for administering the regulations contained in this part;
- (e) locations where classes will be conducted;
- (f) title of each course to be conducted;
- (g) final examination to be presented for each course, including the answer key;
- (h) all times included on each test form must be consistent with content specifications indicated for each course. Weighing of significant content areas should fall within the weight ranges indicated. All reference sources used to support each correct answer must be included. Linkage to each answer must be indicated with a footnote showing page number, subject matter, etc.;
- (i) description of materials that will be distributed;
- (j) the books that will be used for the outline and the final exams; and
- (k) detailed outline for local concerns when applying for broker course approval.

### §176.3 Subjects for study—real estate salespersons

(a) The following are the required subjects to be included in the course of study in real estate for licensure as a real estate salesperson, and the required number of hours to be devoted to each subject:

Salesperson’s Course	
<i>Subject Matter</i>	<i>Hours</i>
License Law and Regulations	3
Law of Agency	11
Legal Issues	10
The Contract of Sales and Leases	3
Real Estate Finance	5

Land Use Regulations	3
Construction and Environmental Issues	5
Valuation Process and Pricing Properties	3
Human Rights and Fair Housing	4
Real Estate Mathematics	1
Municipal Agencies	2
Property Insurance	2
Taxes and Assessments	3
Condominiums and Cooperatives	4
Commercial and Investment Properties	10
Income Tax in Real Estate Transactions	3
Mortgage Brokerages	1
Property Management	2
Instruction	75
Final Examination	3
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Total	78

(b) All approved courses must use this course syllabus in conducting their programs.

### §176.4 Subjects for study—real estate broker

The education qualifications for real estate broker's license requires the completion of:

(a) an approved real estate salesperson's course except that a salesperson who was licensed prior to November 1, 1979, may substitute 75 hours of approved continuing education in lieu of a salesperson's course; and

(b) an approved real estate broker's course.

Before enrolling a student into an approved broker's course, the education coordinator must be provided with evidence of a signed statement from the student indicating that he/she has successfully completed the salesperson's course. Proof of the student's completion of the prerequisite course must be kept on file by the education coordinator. The following are the required subjects to be included in the course of study in real estate for licensure as a real estate broker and the required number of hours to be devoted to each subject:

Broker's Course	Hours
<i>Subject Matter</i>	
Broker's office—operation, management and supervision	10
Real estate agency disclosure (review)	4
General Business Law	5
Real estate finance II	5
Real estate investment	5
Real property management	5
Conveyance of real property and title closing and costs (review)	3
Construction and development	4
Taxes and assessments	2
Local concerns*	2
• Cease and desist regulations	
• Nonsolicitation orders	
• Illegal entities/conversions	
• Rent regulations (rent control, rent stabilization)	
• Farm land	
• Forestry	
• Sign ordinances	
• Zoning	
• Waterfront property	
• Wetlands/restrictions	
• Environment problems in an area	

Instruction	45 Hours
Final examination	3 Hours
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Total	48 Hours

\* Program coordinators are not limited to these topics. They must, however, submit an outline and learning objectives for the two hours that will be presented to students.

All approved instructors must use this course syllabus in conducting their program.

### §176.5 Computation of instruction time

To meet the minimum statutory requirement, attendance shall be computed on the basis of an hour equaling 50 minutes. For every 50 minutes of instruction there shall be an additional 10 minute break. The time of the breaks shall be left to the discretion of the individual education coordinator. Breaks shall not be considered optional, nor are they to be used to release the class earlier than scheduled.

### §176.6 Attendance and examinations

(a) No licensed person shall receive credit for any course or course module presented in a class-room setting if he or she is absent from the class room, during any instructional period, for a period or periods totaling more than 10 percent of the time prescribed for the course or course module pursuant to sections 176.3 and 176.4 of this Title, and no licensed person shall be absent from the class room except for a reasonable and unavoidable cause.

(b) Students who fail to attend the required scheduled class hours may, at the discretion of the approved entity, make up the missed subject matter during subsequent classes presented by the approved entity.

(c) Final examinations may not be taken by any student who has not satisfied the attendance requirement.

(d) A make up examination may be presented to students at the discretion of the approved entity. Make up examinations must be submitted for approval to the department in accordance with guidelines noted in §176.2 (g) and (h) of this Part.

### §176.7 [Reserved]

### §176.8 Facilities

Each course shall be presented in such premises and in such facilities as shall be necessary to properly present the course. No course shall be presented in any real estate broker's office or the office of any association of real estate brokers except as otherwise may be permitted under this Part.

### §176.9 Examination requirement and record retention

(a) All organizations conducting approved courses of study shall retain the attendance records, the final examinations and a list of students who successfully complete each course for a period of three years after completion of each course. All documents shall at all times during such period be available for inspection by duly authorized representatives of the Department of State.

(b) All examinations required for course work shall be written and given within a reasonable time after the course work has been

conducted. The failure of the final exam shall constitute failure of the course.

### **§176.10 Change in approved course of study**

There shall be no change or alteration in any approved course of study of any subject or in any instruction staff without prior written notice to and approval by the department.

### **§176.11 Faculty**

(a) Each instructor, as certified by the Department of State, for an approved real estate course of study, shall submit a resume to the department and meet the following criteria, and shall achieve at least 100 points based on the following scale which includes real estate brokerage/specialty experience, instructional experience and academic achievement.

(b) In order to receive approval as an instructor, an individual must achieve 100 points in the system employed below:

#### 1. Section One

A maximum of 50 points can be claimed in this section.

(a) Licensed as a real estate broker or salesperson

Each year of experience = 10 points

or

(b) Work experience in a specialized field directly related to real estate

Each year of experience = 10 points

or

(c) Attorney, admitted to New York State Bar

Each year of experience = 10 points

#### 2. Section Two

A maximum of 50 points can be claimed in this section.

Experience as an instructor = 10 points for each year

#### 3. Section Three

A maximum of 30 points can be claimed in this section.

Formal academic achievement in a specialized subject matter directly related to real estate (five points for each 30 hour course successfully completed)

#### 4. Section Four

50 points can be claimed in this section.

Formal training in the techniques of organizing and presenting instructional material

#### 5. Section Five

Only one selection may be made in this section.

The holder of one of the following:

AAS Degree	20 points
B.A. or B.S. Degree	30 points
M.A. or L.L.D. or JDDegree	40 points
B.A., B.S. or M.A. with a Major in Real Estate	50 points

(c) An approved entity, which engages presenters to conduct classes identified as technical subjects, are exempt from the provisions of this section 176.11 except that an approved entity must make application to the Department of State accompanied by a resume indicating at least three years of experience in the specified technical area.

(d) All points claimed are subject to verification within two years of application.

(e) Any applicant who fails to provide evidence of claimed points may be subjected to disciplinary action.

### **§176.12 [Reserved]**

### **§176.13 [Reserved]**

### **§176.14 Auditing**

A duly authorized designee of the department may audit any course offered, and may verify attendance and inspect the records of attendance of the course at any time during its presentation or thereafter.

### **§176.15 College degree major in real estate**

Evidence satisfactory to the department of the successful completion of a course of study at any accredited college or university in the United States of America, approved by the Commissioner of Education of the State of New York or by a regional accrediting agency accepted by said Commissioner of Education, which has a program leading to a recognized collegiate degree, which includes therein a major in real estate, may be deemed acceptable for the educational credit under §§176.3 and 176.4 of this Part, provided attendance at such real estate course is not less than 120 hours in the case of an applicant for licensure as a real estate broker, and 75 hours in the case of an applicant for licensure as a real estate salesperson, and the applicant presents evidence of the issuance of a bachelor's degree and that he has passed the required course in real estate.

### **§176.16 Suspensions and denials of course approval**

Within 45 days after the receipt of the application for approval of an offering, the department shall inform the entity as to whether the offering has been approved, denied, or whether additional information is needed to determine the acceptability of the offering. The department may deny, suspend, or revoke the approval of a real estate course or a real estate instructor, if it is determined that they are not in compliance with the law and rules, or if the offering does not adequately reflect and present current real estate knowledge as a basis for a level of real estate practice. If disciplinary action is taken, a written order of suspension, revocation or denial of approval will be issued. Anyone who objects to such denial, suspension or revocation shall have the opportunity to be heard by the Secretary of State or his designee.

### **§176.17 Open to public**

All courses approved pursuant to this Part shall be open to all members of the public regardless of the membership of the prospective student in any real estate board, or real estate related professional society or organization.

### **§176.18 [Reserved]**

### **§176.19 [Reserved]**

### **§176.20 Certificate of completion**

(a) Evidence of successful completion of the course must be furnished to students in certificate form. The certificate must indicate the following: name of the entity; Real Estate Salesperson's Course, 75 hours, or Real Estate Broker's Course, 45 hours; code number of the entity; a statement that the student, who shall be named, has satisfactorily completed a course of study in real estate subjects approved by the Secretary of State in accordance with the provisions of chapter 868 of the Laws of 1977, and that his or her attendance record was satisfactory and in conformity with the law, and that such course was completed on a stated date. The certificate must be signed by the owner or course coordinator and dated, and must have affixed thereto the official seal of the school or entity.

(b) A list of all the names of students who successfully complete each course of study must be submitted to the Department of State within 15 days of completion.

### **§176.21 Fees**

Each school or entity shall pay an annual registration fee of \$300 for each 12 months or part thereof, and an additional registration fee of \$150 for each 12 months or part thereof for each location in excess of one where courses are to be given, said period to run from each September 1st to the subsequent August 31st. For each teacher employed to teach the Real Estate Broker's or Real Estate Salesperson's course, each school or entity shall pay a one-time registration fee of \$25. Fees shall be payable on submission of the application or applications, and are nonrefundable.

### **§176.22 Distance learning**

Distance Education is defined as any educational process based on the geographical separation of instructor and learner (for example, CD-ROM, disk, on-line learning). Educational providers who wish to offer distance learning programs must have their programs evaluated and approved in accordance with the provisions of this Part, specifically sections 176.23, 176.24 and 176.25.

### **§176.23 Distance learning program requirements:**

(a) the material of a distance learning program must be divided into major units;

(b) the contents of major units must be divided into modules of instructions;

(c) the distance learning program must contain a time-default mechanism for inactivity so that a student is not credited when not actively participating in the program;

(d) the school or other person offering the program must obtain from each student a signed and dated statement that he or she personally completed each module of the learning program;

(e) the school or other person offering the program must retain a record of each student's participation in and completion of the distance learning program for a period of three years, and such records must be available for review and inspection by the Department of State;

(f) the educational provider must have an instructor approved pursuant to section 176.11 of this Part available to students, during reasonable business hours, to answer questions pertaining to the qualifying course content;

(g) the course must include a proctored final examination which must be held at a location within New York State approved by the Department.

### **§176.24 Request for approval of distance learning programs**

Applications for approval to conduct distance learning courses of study to satisfy the requirements for licensed real estate salesperson and broker shall be made 60 days before the proposed course is to be conducted. The application shall be prescribed by the Department to include the following:

(a) name, business address and telephone number of the proposed school which will present the course;

(b) if applicant is a partnership, the names and home addresses of the partners in the entity, of a corporation, the names and home addresses of any persons who own five percent or more of the stock of the entity.

(c) the name, home and business address and telephone number of the education coordinator that will be responsible for administering the regulations contained in this part;

(d) locations where the final examination will be conducted;

(e) title of each course to be conducted;

(f) final examination to be presented for each course, including the answer key;

(g) all times included on each test form must be consistent with content specifications indicated for each course. Weighing of significant content areas should fall within the weight ranges indicated. All reference sources used to support each correct answer must be included. Linkage to each answer must be indicated with a footnote showing page number, subject matter, etc.;

(h) the books that will be used for the outline and the final exams;

(i) an explanation of the means for monitoring and verifying each student's active participation, on an ongoing basis, during each module of instruction;

(j) a brief description of the hardware and software to be used by the student;

(k) a plan for providing technical support to the student;

(l) a detailed course outline divided into major units; the contents of major units must be divided into modules of instruction;

(m) a detailed outline for local concerns when applying for broker course approval.

### **§176.25 Course completion for distance learning courses**

(a) The student must successfully complete a distance learning course within 12 months of starting the program. This includes the passing of the school's final examination.

(b) A list of the names of students who successfully complete each course of study must be submitted to the Department of State within 15 days of completion.

(c) The school or other person offering a program must provide evidence of successful completion of the course to each student in certificate form. The certificate must indicate the following: name of entity; Real Estate Salesperson's Course, 75 hours, or Real Estate Broker's Course, 45 hours; code number of entity; a statement that the student, who shall be named, has satisfactorily completed a course of study in real estate subjects approved by the Secretary of State in accordance with the provisions of chapter 868 of the Laws of 1977, and that his or her attendance record was satisfactory and in conformity with the law, and that such course was completed on a stated date. The

certificate must be signed by the owner or course coordinator and dated, and must have affixed thereto the official seal of the school or entity.

### §176.26 30 hour supplemental course

(a) Applicants for licensure as a real estate broker who successfully completed the 45 hour salesperson qualifying course prior to July 1, 2008 may take a 30 hour supplemental course which, if successfully completed, may be used by said applicant in conjunction with the 45 hour salesperson qualifying course towards satisfying the salesperson educational requirements for licensure as a real estate broker, as provided in section 176.4(a) of this Part.

(b) The following are the required subjects to be included in the 30 hour supplemental course and the required number of hours to be devoted to each such subject:

Contract preparation	1 hour
Predatory lending	1 hour
Pricing properties	1 hour
Municipal agencies	2 hours
Property insurance	2 hours
Taxes and assessments	3 hours
Condominiums and cooperatives	4 hours
Commercial and investments properties	10 hours
Income tax issues and real estate transactions	3 hours
Mortgage brokerage	1 hour
Property management	2 hours
Total	30 hours
Final Exam	2 hours
TOTAL	32 hours

## PART 177 CONTINUING EDUCATION

### Section

177.1	General requirement
177.2	Approved entities
177.3	Request for approval of course of study in classroom setting
177.4	Successful completion of course in classroom setting
177.5	Credit for teaching
177.6	Extension of time to complete courses
177.7	Computation of instruction time
177.8	Attendance
177.9	[Reserved]
177.10	[Reserved]
177.11	Auditing
177.12	[Reserved]
177.13	Change in approved course of study
177.14	Suspensions and denials of course approval
177.15	Open to public
177.16	Facilities
177.17	Faculty
177.18	Continuing education credit
177.19	Registration period
177.20	Distance learning programs—Computer based
177.21	Request for approval of distance learning programs
177.22	Distance learning program requirements

### §177.1 General requirement

(a) Renewals. No renewal license shall be issued to any real estate broker or salesperson for any license period commencing on or after 11/1/95 unless such licensee shall provide evidence of completion of

22½ hours of approved continuing education within the two-year period immediately preceding such renewal. However, such continuing education requirement shall not apply to any licensed real estate broker who is engaged full-time in the real estate business and who has been licensed prior to July 1, 2008 for at least 15 consecutive years immediately preceding such renewal.

(b) Course approval. No offering of a course of study in the real estate field for the purpose of compliance with the continuing education requirements of subdivision 3 of §441 of the Real Property Law shall be acceptable for credit unless such course of study shall have been approved by the department under the provisions of this Part.

### §177.2 Approved entities

Continuing education real estate courses and offerings may be given by any college or university accredited by the Commissioner of Education of the State of New York or by a regional accrediting agency approved by said Commissioner of Education; public or private vocational schools; real estate boards; and real estate-related professional societies and organizations. Courses, including sales or technology, that increase the competency of the licensee as it relates to the real estate transaction shall be acceptable as meeting continuing education requirements subject to the restrictions set forth in paragraph (d) of this section. No real estate course of study seeking approval may be affiliated with or controlled by a real estate broker, salesperson, firm or company or real estate franchise, or controlled by a subsidiary of any real estate broker or real estate franchise. The following types of instruction shall not be acceptable as meeting continuing education requirements:

(a) general training or education to prepare a student for passing a real estate broker's or salesperson's examination which is not part of an approved course under Part 176 of this Title;

(b) offerings in mechanical office and business skills, such as typing, basic computer skills training, instructional navigation of the world wide web, instructional use of generic computer software, speed reading, memory improvement, report writing, personal motivation, salesmanship and sales psychology;

(c) sales promotion meetings; and

(d) subjects that are not real estate related.

### §177.3 Request for approval of course of study in class-room setting

The following applies to courses to be presented in a class-room setting where the instructor is present with the class. Requests for approval of courses of study in the real estate field to be given to satisfy the requirements for continuing education under the provisions of this Part shall be made 60 days before the proposed course is to be given, and on a form prescribed by the department which shall include the following:

(a) name, address and telephone number of the applicant;

(b) if applicant is a partnership, the names of the partners in the entity; if a corporation, the names of any persons who own five percent or more of the stock of the entity;

(c) title of each course to be offered;

(d) date and location of each course offered;

(e) duration and time of each course offered;

(f) procedure for taking attendance;

(g) a detailed outline of the subject matter of each course or seminar containing at least 22½ hours of instruction, or of each course module

containing at least three hours of instruction, together with the time sequence of each segment thereof, the faculty for each segment, and teaching techniques used in each segment; and

(h) description of materials to be distributed to the participants.

#### **§177.4 Successful completion of course in classroom setting**

(a) Any subject course for continuing education shall be accepted for credit on the basis of attendance only. The course administrator must submit to the department within 15 days the names and license registration numbers of all individuals who successfully completed the approved course.

(b) Evidence of successful completion of the course must be furnished to students in certificate form. The certificate must indicate the following: the name of the approved entity, the name of the course, the code number of the course, and that the student who shall be named has satisfactorily completed a continuing education course approved by the Department of State and the number of hours earned. The certificate must be signed and dated by the owner or course coordinator.

#### **§177.5 Credit for teaching**

A licensee who shall teach an approved real estate course pursuant to Part 176 of this Subchapter or an approved subject offered for continuing education shall be credited with two hours for each hour of actual teaching performed. Records of such teaching shall be maintained by the person or organization presenting the course and certified on forms prescribed by the department. The records of such teaching shall be deemed records of attendance for all purposes of these rules.

#### **§177.6 Extension of time to complete courses**

The department may grant a waiver to any licensee who evidences bona fide hardship precluding completion of the continuing education requirements prior to the time the renewal application is to be filed. A licensee seeking such a waiver shall file the appropriate renewal application, together with the evidence demonstrating such hardship, together with a written request for such waiver.

#### **§177.7 Computation of instruction time**

To meet the minimum statutory requirement, attendance shall be computed on the basis of an hour equaling 60 minutes.

#### **§177.8 Attendance**

(a) No licensed person shall receive credit for any course or course module presented in a classroom setting if he or she is absent from the class room, during any instructional period, for a period or periods totaling more than 10 percent of the time prescribed for the course or course module pursuant to section 177.3(g) or section 177.21(e) of this Part, and no licensed person shall be absent from the classroom except for a reasonable and unavoidable cause. If a course or course module is computer based and is not presented in a classroom setting, no licensed person shall receive credit for the course or course module if he or she fails to complete any portion of the course or course module.

(b) The person or organization conducting the course shall certify to the department the name of each licensed person who successfully completed the course of study and his or her license registration

number, and shall maintain its attendance records and a copy of such report for three years and, in addition, shall maintain the following record concerning the course:

- (1) the approval number issued by the department for the course;
- (2) the offering, title and description of the course;
- (3) the dates and hours the course was given; and
- (4) the names of the persons who took the course and whether they passed or failed.

#### **§177.9 [Reserved]**

#### **§177.10 [Reserved]**

#### **§177.11 Auditing**

A duly authorized designee of the department may audit any course offered and may verify attendance and inspect the records of attendance of the course at any time during its presentation or thereafter.

#### **§177.12 [Reserved]**

#### **§177.13 Change in approved course of study**

There shall be no change or alteration in any approved course of study of any subject or in any instruction staff without prior written notice to, and approval by, the department.

#### **§177.14 Suspensions and denials of course approval**

Within 45 days after the receipt of the application for approval of an offering, the department shall inform the entity as to whether the offering has been approved, denied, or whether additional information is needed to determine the acceptability of the offering. The department may deny, suspend or revoke the approval of a real estate course or a real estate instructor, if it is determined that they are not in compliance with the law and rules or if the offering does not adequately reflect and present current real estate knowledge as a basis for a level of real estate practice. If disciplinary action is taken, a written order of suspension, revocation, or denial of approval will be issued. Anyone who objects to such denial, suspension or revocation shall have the opportunity to be heard by the Secretary of State or his designee.

#### **§177.15 Open to public**

All courses approved pursuant to this Part shall be open to all members of the public regardless of the membership of the prospective student in any real estate board, or real estate-related professional society or organization.

#### **§177.16 Facilities**

Each course shall be presented in such premises and in such facilities as shall be necessary to properly present the course. No course shall be presented in any real estate broker's office or the office of any association of real estate brokers, except as otherwise may be permitted under these rules.

## §177.17 Faculty

A person intending to present an approved course shall first be qualified pursuant to §176.11 of this Title.

## §177.18 Continuing education credit

(a) A salesperson who has received credit for a broker qualifying course pursuant to Part 176 of this Subchapter during a period of time as defined in section 441(3)(a) of the Real Property Law, shall receive continuing education credit for such course for such period.

(b) A salesperson may receive 19½ hours of continuing education credit for successfully completing the approved 30 hour supplemental course as described in section 176.26 of this Subchapter; provided, however, that in order to complete the 22½ hours of continuing education required in Real Property Law section 441(3)(a), such salesperson must also complete three hours of instruction pertaining to fair housing and/or discrimination in the sale or rental of real property or an interest in real property.

(c) No continuing education course will be considered for continuing education credit more than once within the two year cycle of renewal.

## §177.19 Registration period

Each registration or renewal period for approved programs or courses shall be for 12 months or a part thereof, said period to commence on January 1st or date thereafter and to continue until December 31st.

## §177.20 Distance learning programs-computer based

Distance education is defined as any educational process based on the geographical separation of instructor and learner (*e.g.*, CDROM, disk, on-line learning, etc.). Educational providers who wish to offer distance learning programs must have their programs evaluated and approved in accordance with the provisions of this Part, including specifically sections 177.21 and 177.22.

## §177.21 Request for approval of distance learning programs

Each request for approval of a distance learning program shall be made at least 60 days before the proposed course is to be offered and shall include the following:

- (a) name, address and telephone number of the applicant;
- (b) if applicant is a partnership, the names of the partners in the entity; if a corporation, the names of any persons who own five percent or more of the stock of the entity;
- (c) title of each course to be offered;
- (d) duration and time of each course offered;
- (e) a detailed outline of the subject matter of each course, together with the time sequence of each major unit and module;
- (f) the disk or CD-ROM for the course or access to the on-line course;
- (g) an explanation of the means for monitoring and verifying each student's active participation, on an ongoing basis, during each module of instruction;
- (h) a brief description of the hardware and software to be used by the student; and

- (i) a plan for providing technical support to the student.

## §177.22 Distance learning program requirements

To be approved, a distance learning program must meet the following criteria:

(a) the material of a distance learning program must be divided into major units;

(b) the contents of major units must be divided into modules of instruction;

(c) the distance learning program must contain a time-default mechanism for inactivity so that a student is not credited when not actively participating in the program;

(d) the school or other person offering the program must obtain from each student a signed and dated statement that he or she personally completed each module of the learning program;

(e) the school or other person offering the program must retain a record of each student's participation in and completion of the distance-learning program for a period of three years, and such record must be available for review and inspection by the Department of State;

(f)-(g) [*Reserved*]

(h) the school or other person offering the program must provide evidence of successful completion of the course to each student in certificate form. The certificate must indicate the following: the name of the approved entity, the name of the course, the code number of the course, and that the student, who shall be named, has satisfactorily completed the continuing education course approved by the Department of State and the number of hours earned. The certificate must be signed and dated by the owner or course coordinator or other person offering the program; and

(i) the school or other person offering the program must submit to the Department of State within 15 days the names and license registration numbers of all individuals who successfully completed the approved course.

## PART 178 NONSOLICITATION ORDERS

### Section

178.1	Definition of nonsolicitation order
178.2	[ <i>Reserved</i> ]
178.3	Residential property
178.4	Boundary streets
178.5	Prohibited forms of solicitation

## §178.1 Definition of nonsolicitation order

A nonsolicitation order is a directive to all real estate brokers and real estate salespersons. The nonsolicitation order directs that all brokers and salespersons must refrain from soliciting listings for the sale of residential property within a designated geographic area. A nonsolicitation order prohibits any and all types of solicitation directed at or toward homeowners in the designated geographic area. The types of solicitation that are prohibited include but are not limited to letters, postcards, telephone calls, door-to-door calls, handbills, and postings in public areas. In addition, a nonsolicitation order may contain such other terms or conditions as the Secretary of State may determine are, on balance, in the best interest of the public, which shall include but not be limited to the affected owners and licensees.

## §178.2 [Reserved]

### §178.3 Residential property

For the purposes of this Part, the term residence or residential property shall include any of the following:

- (a) a one-family residence;
- (b) a two-family residence;
- (c) a three-family residence;
- (d) a residential cooperative apartment; and
- (e) a residential condominium unit.

### §178.4 Boundary streets

For the purposes of this Part, a nonsolicitation area shall include all properties abutting the boundary streets named in the description of the nonsolicitation area. The intent being that the nonsolicitation area shall include properties on both sides of the boundary streets.

### §178.5 Prohibited forms of solicitation

(a) Within a nonsolicitation area, no real estate broker or real estate salesperson shall engage in any form of solicitation where the purpose of such solicitation is, directly or indirectly, to obtain a listing of residential property for sale and where such solicitation is directed at or toward a homeowner or occupant of residential property within a designated nonsolicitation area.

(b) The following are examples of the types of solicitation that are prohibited:

- (1) letters;
- (2) postcards;
- (3) handbills or leaflets or fliers;
- (4) direct advertising delivered by mail or other service;
- (5) telephone calls;
- (6) door-to-door calls; and
- (7) postings in public places.

(c) The following is not prohibited by a nonsolicitation order. Advertisements that are published in newspapers of general circulation:

- (1) if such newspaper has a general readership throughout the metropolitan New York City area or throughout a substantial portion of the metropolitan New York City area;
- (2) if such newspaper is published not less than once per week; and
- (3) if such newspaper is sold by subscription or by individual copy and is not distributed free of charge.

## PART 179 DETERMINATION OF REAL ESTATE EXPERIENCE

### Section

179.1	Qualifying experience
179.2	Point system
179.3	Experience point schedule

### §179.1 Qualifying experience

An applicant for licensure as a real estate broker must possess two years of full-time experience as a licensed real estate salesperson under the supervision of a licensed real estate broker or the equivalent full-time experience in general real estate business for a period of at least three years.

### §179.2 Point system

(a) An applicant will receive credit for such experience according to the point system set forth in section 179.3 of this Part.

(b) 3500 points shall equate to two years of full-time experience.

(c) Upon request by the department, either prior to or after licensure, an applicant shall provide documentation or other proof to substantiate any or all of the experience claimed by the applicant. Failure to promptly provide the requested documentation or proof shall be grounds to deny the application, or if the applicant has been licensed, shall be grounds to suspend or revoke such license. Any false claim of experience shall be grounds to deny the application, or if the applicant has been licensed, shall be grounds to suspend or revoke such license.

### §179.3 Experience point schedule

(a) Experience points shall be credited an applicant in accordance with the following schedule:

#### REAL ESTATE BROKER POINT SYSTEM FOR LICENSED SALESPERSON ACTIVITY ONLY

Category	Point Value
<b>RESIDENTIAL SALES:</b>	
1. Single Family, condo, co-op unit, multi-family (2 to 8-unit), farm (with residence, under 100 acres)	250
2. Exclusive listings	10
3. Open listings	1
4. Binders effected	25
5. Co-op unit transaction approved by seller and buyer that fails to win Board of Directors approval	100
<b>RESIDENTIAL RENTALS:</b>	
6. Rentals or subleases effected	25
7. Exclusive Listings	5
8. Open Listings	1
9. Property Management	
- Lease renewal	2
- Rent collections per tenant/per year	1
<b>COMMERCIAL SALES:</b>	
10. Taxpayer	400
11. Office Building	400
12. Apartment Building (9 units or more)	400
13. Shopping Center	400
14. Factory/Industrial warehouse	400
15. Hotel/Motel	400
16. Transient garage/parking lot	400
17. Multi-unit commercial condominium	400
18. Urban commercial development site	400
19. Alternative sale type transaction	400
20. Single-tenant commercial condo	250
21. Listings	10
<b>COMMERCIAL LEASING:</b>	

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## GLOSSARY OF REAL ESTATE TERMS

### A

**Abstract of Title** - A summary of all of the recorded instruments and proceedings which affect the title to property, arranged in the order in which they were recorded.

**Accretion** - The addition of land through processes of nature, as by water or wind.

**Accrued Interest** - Accrue; to grow; to be added to. Accrued interest is interest that has been earned but not due and payable.

**Acknowledgment** - A formal declaration before a duly authorized officer by a person who has executed an instrument that such execution is the person's act and deed.

**Acquisition** - An act or process by which a person procures property.

**Acre** - A measure of land equaling 43,560 square feet.

**Action for Specific Performance** - A court action to compel a defaulting principal to comply with the provisions of a contract.

**Adjacent** - Lying near to but not necessarily in actual contact with.

**Adjoining** - Contiguous; attaching, in actual contact with.

**Administrator** - A person appointed by court to administer the estate of a deceased person who left no will; i.e., who died intestate.

**Ad Valorem** - According to valuation.

**Adverse Possession** - A means of acquiring title where an occupant has been in actual, open, notorious, exclusive, and continuous occupancy of property under a claim of right for the required statutory period.

**Affidavit** - A statement or declaration reduced to writing, and sworn to or affirmed before some officer who is authorized to administer an oath or affirmation.

**Affirm** - To confirm, to ratify, to verify.

**Agency** - That relationship between principal and agent which arises out of a contract either expressed or implied, written or oral, wherein an agent is employed by a person to do certain acts on the person's behalf in dealing with a third party.

**Agent** - One who undertakes to transact some business or to manage some affair for another by authority of the latter.

**Agreement of Sale** - A written agreement between seller and purchaser in which the purchaser agrees to buy certain real estate and the seller agrees to sell upon terms and conditions set forth therein.

**Air Rights** - Rights in real property to use the space above the surface of the land.

**Alienation** - A transferring of property to another; the transfer of property and possession of lands, or other things, from one person to another.

**Alienation Clause** - Allows lender to require the balance of a loan to be paid in full if the collateral is sold (also known as a "due on sale" clause).

**Amortization** - A gradual paying off of a debt by periodic installments.

**Apportionment** - Adjustment of the income, expenses or carrying charges of real estate usually computed to the date of closing of title so

22.	New Lease-aggregate rental \$1 to \$200,000	150
23.	New Lease-aggregate rental \$200,000 to \$1 million	250
24.	New Lease-aggregate rental over \$1 million	400
25.	Renewal-aggregate renewal \$1 to \$200,000	75
26.	Renewal-aggregate rental \$200,000 to \$1 million	125
27.	Renewal-aggregate rental over \$1 million	200
28.	Listings	10

#### COMMERCIAL FINANCING:

(includes residential properties of more than four units):

29.	\$1 to \$500,000	200
30.	\$500,000 to \$5,000,000	300
31.	Over \$5,000,000	400

#### MISCELLANEOUS:

32.	Sale vacant lots, land (under 100 acres)	50
33.	Sale vacant land (more than 100 acres)	150
34.	Other must be fully explained.	—

**TOTAL POINTS NEEDED:** 3500

(b) An applicant shall have the burden of establishing to the satisfaction of the department that the applicant actually performed the work associated with the real estate transaction claimed as experience credit.

that the seller pays all expenses to that date. The buyer assumes all expenses commencing the date the deed is conveyed to the buyer.

**Appraisal** - An estimate of a property's value by an appraiser who is usually presumed to be expert in his work.

**Appraisal by Income Capitalization Approach** - An estimate of value by capitalization of productivity and income.

**Appraisal by Sale Comparison Approach** - Comparability with the sale prices of other similar properties.

**Appraisal by Cost Approach** - Adding together all parts of a property separately appraised to form a whole: e.g., value of the land considered as vacant added to the cost of reproduction of the building, less depreciation.

**Appurtenance** - Something which is outside the property itself but belongs to the land and adds to its greater enjoyment such as a right-of-way or a barn or a dwelling.

**Assessed Valuation** - A valuation placed upon property by a public officer or a board, as a basis for taxation.

**Assessment** - A charge against real estate made by a unit of government to cover a proportionate cost of an improvement such as a street or sewer.

**Assessor** - An official who has the responsibility of determining assessed values.

**Assignee** - The person to whom an agreement or contract is assigned.

**Assignment** - The method or manner by which a right or contract is transferred from one person to another.

**Assignor** - A party who assigns or transfers an agreement or contract to another.

**Assumption of Mortgage** - The taking of title to property by a grantee, wherein the grantee assumes liability for payment of an existing note or bond secured by a mortgage against a property and becomes personally liable for the payment of such mortgage debt.

**Avulsion** - A sudden and perceptible loss or addition to land by the action of water, or a sudden change in the bed or course of a stream.

## B

**Balloon Mortgage Payment** - A large payment during the term of a mortgage, often at the end.

**Beneficiary** - The person who receives or is to receive the benefits resulting from certain acts.

**Bequeath** - To give or hand down by will; to leave by will.

**Bequest** - That which is given by the terms of a will.

**Bill of Sale** - A written instrument given to pass title of personal property from vendor to vendee.

**Binder** - An agreement to cover the down payment for the purchase of real estate as evidence of good faith on the part of the purchaser.

**Blanket Mortgage** - A mortgage covering more than one property. A blanket mortgage is often used for subdivision financing.

**Blockbusting** - The practice of inducing homeowners in a particular neighborhood to sell their homes quickly, often at below market prices, by creating the fear that the entry of a minority group or groups into the neighborhood will cause a precipitous decline in property values.

**Bona Fide** - In good faith, without fraud.

**Bond** - The evidence of a personal debt which is secured by a mortgage or other lien on real estate.

**Building Code** - Regulations established by state or local governments stating fully the structural requirements for building.

**Building Line** - A line fixed at a certain distance from the front and/or sides of a lot, beyond which no building can project.

**Building Loan Agreement** - An agreement whereby the lender advances money to an owner primarily in the erection of buildings. Such funds are commonly advanced in installments as the structure is completed.

**Building Permit** - Written governmental permission for the construction, renovation or substantial repair of a building.

## C

**Cancellation Clause** - A provision in a lease or other contract which confers upon one or more of all of the parties to the lease the right to terminate the party's or parties' obligations thereunder upon the occurrence of the condition or contingency set forth in the said clause.

**Capital Appreciation** - The appreciation accruing to the benefit of the capital improvement to real estate.

**Capital Asset** - Any asset of a permanent nature used for the production of income.

**Capital Gain** - Income that results from the sale of an asset not in the usual course of business. (Capital gains may be taxed at a lower rate than ordinary income.)

**Capital Improvement** - Any structure erected as a permanent improvement to real estate, usually extending the useful life and value of a property. (The replacement of a roof would be considered a capital improvement.)

**Capital Loss** - A loss from the sale of an asset not in the usual course of business.

**Caveat Emptor** - Let the buyer beware. The buyer must examine the goods or property and buy at the buyer's own risk.

**Cease and Desist List** - Upon the establishment of a cease and desist zone by the Secretary, a list of homeowners who have filed owner's statements expressing their wish not to be solicited by real estate brokers or salespersons. Soliciting of listed homeowners by licensees is prohibited. Violators of such prohibition are subject to licensure suspension or revocation.

**Cease and Desist Zone** - A rule adopted by the Secretary of State which prohibits the direct solicitation of homeowners whose names and addresses appear on a cease and desist list maintained by the Secretary. Such rule may be adopted upon the Secretary's determination that some homeowners within a defined geographic area have been subject to intense and repeated solicitation by real estate brokers and salespersons.

**Certificate of Occupancy (CO)** - A document issued by a governmental authority that a building is ready and fit for occupancy.

**Chain of Title** - A history of conveyances and incumbrances affecting a title from the time the original patent was granted, or as far back as records are available.

**Chattel** - Personal property, such as household goods.

**Client** - The one by whom a broker is employed.

**Closing Date** - The date upon which the property is conveyed by the seller to the buyer.

**Cloud on the Title** - An outstanding claim or incumbrance which, if valid, would affect or impair the owner's title.

**Collateral** - Additional security pledged for the payment of an obligation.

**Color of Title** - That which appears to be good title, but which is not title in fact.

**Commingling** - To mingle or mix, for example, a client's funds in the broker's personal or general account.

**Commission** - A sum due a real estate broker for services in that capacity.

**Commitment** - A pledge or a promise or affirmation agreement.

**Completion Bond** - A bond used to guarantee that a proposed subdivision development will be completed.

**Condemnation** - Taking private property for public use, with fair compensation to the owner; exercising the right of eminent domain.

**Conditional Sales Contract** - A contract for the sale of property stating that delivery is to be made to the buyer, title to remain vested in the seller until the conditions of the contract have been fulfilled.

**Consideration** - Anything given to induce another to enter into a contract such as money or personal services.

**Constructive Notice** - Information or knowledge of a fact imputed by law to a person because the person could have discovered the fact by proper diligence and inquiry (e.g. via public records).

**Contingency** - A provision in a contract that requires the occurrence of a specific event before the contract can be completed.

**Contract** - An agreement between competent parties to do or not to do certain things which is legally enforceable, whereby each party acquires a right.

**Conversion** - Change from one character or use to another.

**Conveyance** - The transfer of the title of land from one to another. The means or medium by which title of real estate is transferred.

**Covenants** - Agreements written into deeds and other instruments promising performance or nonperformance of certain acts, or stipulating certain uses or nonuses of the property.

**Cul-de-sac** - A blind alley; a street with only one outlet.

**Current Value** - The value usually sought to be estimated in an appraisal.

## D

**Damages** - The indemnity recoverable by a person who has sustained an injury, either to his/her person, property, or relative rights, through the act or default of another.

**Debit** - The amount charged as due or owing.

**Debt Capital** - Money borrowed for a particular business purpose.

**Debt Service** - Annual amount to be paid by a debtor on an obligation to repay borrowed money.

**Decedent** - One who is dead.

**Decree** - Order issued by one in authority; an edict or law; a judicial decision.

**Dedication** - A grant and appropriation of land by its owner for some public use, accepted for such use, by an authorized public official on behalf of the public.

**Deed** - An instrument in writing duly executed and delivered, that conveys title to real property.

**Deed Restriction** - An imposed restriction in a deed for the purpose of limiting the use of the land such as:

1. A restriction against the sale of liquor thereon.

2. A restriction as to the size, type, value or placement of improvements that may be erected thereon.

**Default** - Failure to fulfill a duty or promise, or to discharge an obligation; omission or failure to perform any acts.

**Defeasance Clause** - The clause in a mortgage that permits the mortgagor to redeem his or her property upon the payment of the obligations to the mortgagee.

**Deficiency Judgment** - A judgment given when the security for a loan does not entirely satisfy the debt upon its default.

**Delivery** - The transfer of the possession of a thing from one person to another.

**Demand Note** - A note which is payable on demand of the holder.

**Demising Clause** - A clause found in a lease whereby the landlord (lessor) leases and the tenant (lessee) takes the property.

**Depreciation** - Loss of value in real property brought about by age, physical deterioration, or functional or economic obsolescence.

**Descent** - When an owner of real estate dies intestate, the owner's property descends, by operation of law, to the owner's distributees.

**Devise** - A gift of real estate by will or last testament.

**Devisee** - One who receives a bequest of real estate made by will.

**Devisor** - One who bequeaths real estate by will.

**Dispossess Proceedings** - Summary process by a landlord to oust a tenant and regain possession of the premises for nonpayment of rent or other breach of conditions of the lease or occupancy.

**Documentary Evidence** - Evidence in the form of written or printed papers.

**Dual Agency** - Representing both principals (seller and buyer) to a transaction.

**Duress** - Unlawful constraint exercised upon a person whereby the person is forced to do some act against the person's will.

## E

**Earnest Money** - Down payment made by a purchaser of real estate as evidence of good faith.

**Easement** - A right that may be exercised by the public or individuals on, over or through the lands of others.

**Economic Life** - The period over which a property will yield the investor a return on the investment.

**Economic Obsolescence** - Lessened desirability or useful life arising from economic forces, such as changes in optimum land use, legislative enactments which restrict or impair property rights, and changes in supply-demand ratios.

**Ejectment** - A form of action to regain possession of real property, with damages for the unlawful retention; used when there is no relationship of landlord and tenant.

**Eminent Domain** - A right of the government to acquire property for necessary public use by condemnation; the owner must be fairly compensated.

**Encroachment** - A building, part of a building, or obstruction which intrudes upon or invades a highway or sidewalk or trespasses upon the property of another.

**Encumbrance** - Any right to or interest in the land interfering with its use or transfer, or subjecting it to an obligation. (Also Incumbrance)

**Endorsement** - An act of signing one's name on the back of a check or note, with or without further qualifications.

**Equity** - The interest or value which the owner has in real estate over and above the liens against it.

**Equity Loan** - Junior loan based on a percentage of the equity.

**Equity of Redemption** - A right of the owner to reclaim property before it is sold through foreclosure proceedings, by the payment of the debt, interest and costs.

**Erosion** - The wearing away of land through processes of nature, as by water and winds.

**Escheat** - The reversion to the State of property in event the owner thereof abandons it or dies, without leaving a will and has no distributees to whom the property may pass by lawful descent.

**Escrow** - A written agreement between two or more parties providing that certain instruments or property be placed with a third party to be delivered to a designated person upon the fulfillment or performance of some act or condition. (See Rule 175.1)

**Estate** - The degree, quantity, nature and extent of interest which a person has in real property.

**Estate in Reversion** - The residue of an estate left for the grantor, to commence in possession after the termination of some particular estate granted by the grantor.

**Estate at Will** - The occupation of lands and tenements by a tenant for an indefinite period, terminable by one or both parties at will.

**Estoppel Certificate** - An instrument executed by the mortgagor setting forth the present status and the balance due on the mortgage as of the date of the execution of the certificate.

**Evection** - A legal proceeding by a lessor landlord to recover possession of real property.

**Evection, Actual** - Where one is either by force or by process of law, actually put out of possession.

**Evection, Constructive** - Any disturbance of the tenant's possession of the leased premises by the landlord whereby the premises are rendered unfit or unsuitable for the purpose for which they were leased.

**Exclusive Agency** - An agreement of employment of a broker to the exclusion of all other brokers; if sale is made by any other broker during term of employment, broker holding exclusive agency is entitled to commissions in addition to the commissions payable to the broker who effected the transaction. (See Rule 175.24)

**Exclusive Right to Sell** - An agreement of employment by a broker under which the exclusive right to sell for a specified period is granted to the broker; if a sale during the term of the agreement is made by the owner or by any other broker, the broker holding such exclusive right to sell is nevertheless entitled to compensation. (See Rule 175.24)

**Executor** - A male person or a corporate entity or any other type of organization named or designed in a will to carry out its provisions as to the disposition of the estate of a deceased person.

**Executrix** - A woman appointed to perform the same duties as an executor.

**Extension Agreement** - An agreement which extends the life of a mortgage to a later date.

## F

**Fee; Fee Simple; Fee Absolute** - Absolute ownership of real property; a person has this type of estate where the person is entitled to the entire property with unconditional power of disposition during the person's life and descending to the person's heirs or distributees.

**Fiduciary** - A person who on behalf of or for the benefit of another transacts business or handles money or property not the person's own; such relationship implies great confidence and trust.

**Fixtures** - Personal property so attached to the land or improvements as to become part of the real property.

**Foreclosure** - A procedure whereby property pledged as security for a debt is sold to pay the debt in the event of default in payments or terms.

**Freehold** - An interest in real estate, not less than an estate for life. (Use of this term discontinued Sept. 1, 1967.)

## G

**Grace Period** - Additional time allowed to perform an act or make a payment before a default occurs.

**Graduated Leases** - A lease which provides for a graduated change at stated intervals in the amount of the rent to be paid; used largely in long-term leases.

**Grant** - A technical term used in deeds of conveyance of lands to indicate a transfer.

**Grantee** - The party to whom the title to real property is conveyed.

**Grantor** - The person who conveys real estate by deed; the seller.

**Gross Income** - Total income from property before any expenses are deducted.

**Gross Lease** - A lease of property whereby the lessor is to meet all property charges regularly incurred through ownership.

**Ground Rent** - Earnings of improved property credited to earning of the ground itself after allowance made for earnings of improvements.

**Group Boycott** - An agreement between members of a trade to exclude other members from fair participation in the trade.

## H

**Habendum Clause** - The "to have and to hold" clause which defines or limits the quantity of the estate granted in the premises of the deed.

**Holdover Tenant** - A tenant who remains in possession of leased property after the expiration of the lease term.

## I

**Incompetent** - A person who is unable to manage his/her own affairs by reason of insanity, imbecility or feeble-mindedness.

**In Rem** - A proceeding against the realty directly; as distinguished from a proceeding against a person. (Used in taking land for nonpayment of taxes, etc.)

**Installments** - Parts of the same debt, payable at successive periods as agreed; payments made to reduce a mortgage.

**Instrument** - A written legal document; created to effect the rights of the parties.

**Interest Rate** - The percentage of a sum of money charged for its use.

**Intestate** - A person who dies having made no will, or leaves one which is defective in form, in which case the person's estate descends to the person's distributees in the manner prescribed by law.

**Involuntary Lien** - A lien imposed against property without consent of the owner, e.g., taxes, special assessments.

**Irrevocable** - Incapable of being recalled or revoked; unchangeable; unalterable.

## J

**Joint Tenancy** - Ownership of realty by two or more persons, each of whom has an undivided interest with the "right of survivorship."

**Judgment** - A formal decision issued by a court concerning the respective rights and claims of the parties to an act or suit.

**Junior Mortgage** - A mortgage second in lien to a previous mortgage.

## L

**Laches** - Delay or negligence in asserting one's legal rights.

**Landlord** - One who rents property to another.

**Lease** - A contract whereby, for a consideration, usually termed rent, one who is entitled to the possession of real property transfers such rights to another for life, for a term of years, or at will.

**Leasehold** - The interest or estate which a lessee of real estate has therein by virtue of the lessee's lease.

**Lessee** - A person to whom property is rented under a lease.

**Lessor** - One who rents property to another under a lease.

**Lien** - A legal right or claim upon a specific property which attaches to the property until a debt is satisfied.

**Life Estate** - The conveyance of title to property for the duration of the life of the grantee.

**Life Tenant** - The holder of a life estate.

**Lis Pendens** - A legal document, filed in the office of the county clerk giving notice that an auction or proceeding is pending in the courts affecting the title to the property. (Not applicable in commission disputes.)

**Listing** - An employment contract between principal and agent, authorizing the agent to perform services for the principal involving the latter's property.

**Littoral Rights** - The right of a property owner whose land borders on a body of water, such as a lake, ocean or sea, to reasonable use and enjoyment of the shore and water the property borders on.

## M

**Mandatory** - Requiring strict conformity or obedience.

**Market Allocation** - An agreement between members of a trade to refrain from competition in specific market areas.

**Market Price** - The actual selling price of a property.

**Market Value** - The most probable price that a property should bring if exposed for sale in the open market for a reasonable period of time, with both the buyer and seller aware of current market conditions, neither being under duress.

**Marketable Title** - A title which a court of equity considers to be so free from defect that it will enforce its acceptance by a purchaser.

**Mechanic's Lien** - A lien given by law upon a building or other improvement upon land, and upon the land itself, to secure the price of labor done upon, and materials furnished for, the improvement.

**Meeting of the Minds** - Whenever all parties to a contract agree to the substance and terms thereof.

**Metes and Bounds** - A term used in describing the boundary lines of land, setting forth all the boundary lines together with their terminal points and angles.

**Minor** - A person under an age specified by law; usually under 18 years of age.

**Monument** - A fixed object and point established by surveyors to establish land locations.

**Mortgage** - An instrument in writing, duly executed and delivered, that creates a lien upon real estate as security for the payment of a specified debt, which is usually in the form of a bond.

**Mortgage Commitment** - A formal indication by a lending institution that it will grant a mortgage loan on property in a certain specified amount and on certain specified terms.

**Mortgage Reduction Certificate** - An instrument executed by the mortgagee, setting forth the present status and the balance due on the mortgage as of the date of the execution of the instrument.

**Mortgagee** - The party who lends money and takes mortgage to secure the payment thereof.

**Mortgagor** - A person who borrows money and gives a mortgage on the person's property as security for the payment of the debt.

**Multiple Listing** - An arrangement among Real Estate Board of Exchange Members, whereby each broker presents the broker's listings to the attention of the other members so that if a sale results, the commission is divided between the broker bringing the listing and the broker making the sale. (See Rule 175.24)

## N

**Net Listing** - A price below which an owner will not sell the property, and at which price a broker will not receive a commission; the broker receives the excess over and above the net listing as the broker's commission. (See Rule 175.19)

**Nonsolicitation Order** - A rule adopted by the Secretary of State which prohibits any or all types of solicitation directed towards homeowners within a defined geographic area. Such rule may be adopted after a public hearing and upon the Secretary's determination that homeowners within the subject area have been subject to intense and repeated solicitations by real estate brokers or salespersons and that such solicitations have caused owners to reasonably believe that property values may decrease because persons of different race, ethnic, religious or social backgrounds are moving or about to move into such area.

**Notary Public** - A public officer who is authorized to take acknowledgments to certain classes of documents, such as deeds, contracts, mortgages, and before whom affidavits may be sworn.

## O

**Obligee** - The person in whose favor an obligation is entered into.

**Obligor** - The person who binds himself/herself to another; one who has engaged to perform some obligation; one who makes a bond.

**Obsolescence** - Loss in value due to reduced desirability and usefulness of a structure because its design and construction become obsolete; loss because of becoming old fashioned, and not in keeping with modern means, with consequent loss of income.

**Open Listing** - A listing given to any number of brokers without liability to compensate any except the one who first secures a buyer ready, willing and able to meet the terms of the listing, or secures the

acceptance by the seller of a satisfactory offer; the sale of the property automatically terminates the listing.

**Option** - A right given for a consideration to purchase or lease a property upon specified terms within a specified time; if the right is not exercised the option holder is not subject to liability for damages; if exercised, the grantor of option must perform.

## P

**Partition** - The division which is made of real property between those who own it in undivided shares.

**Party Wall** - A wall built along the line separating two properties, partly on each, which wall either owner, the owner's heirs and assigns has the right to use; such right constituting an easement over so much of the adjoining owner's land as is covered by the wall.

**Percentage Lease** - A lease of property in which the rental is based upon the percentage of the volume of sales made upon the leased premises, usually provides for minimum rental.

**Performance Bond** - A bond used to guarantee the specific completion of an endeavor in accordance with a contract.

**Personal Property** - Any property which is not real property.

**Plat Book** - A public record containing maps of land showing the division of such land into streets, blocks and lots and indicating the measurements of the individual parcels.

**Plottage** - Increment in unity value of a plot of land created by assembling smaller ownerships into one ownership.

**Points** - Discount charges imposed by lenders to raise the yields on their loans.

**Police Power** - The right of any political body to enact laws and enforce them, for the order, safety, health, morals and general welfare of the public.

**Power of Attorney** - A written instrument duly signed and executed by a person which authorizes an agent to act on his/her behalf to the extent indicated in the instrument.

**Prepayment Clause** - A clause in a mortgage which gives a mortgagor the privilege of paying the mortgage indebtedness before it becomes due.

**Price Fixing** - Conspiring to establish fixed fees or prices for services or products.

**Principal** - The employer of an agent or broker; the broker's or agent's client.

**Probate** - To establish the will of a deceased person.

**Proration** - Allocation of closing costs and credits to buyers and sellers.

**Purchase Money Mortgage** - A mortgage given by a grantee in part payment of the purchase price of real estate.

## Q

**Quiet Enjoyment** - The right of an owner or a person legally in possession to the use of property without interference of possession.

**Quiet Title Suit** - A suit in court to remove a defect, cloud or suspicion regarding legal rights of an owner to a certain parcel of real property.

**Quit Claim Deed** - A deed which conveys simply the grantor's rights or interest in real estate, without any agreement or covenant as to the nature or extent of that interest, or any other covenants; usually used to remove a cloud from the title.

## R

**Racial Steering** - The unlawful practice of influencing a person's housing choice based on his/her race.

**Real Estate Board** - An organization whose members consist primarily of real estate brokers and salespersons.

**Real Estate Syndicate** - A partnership formed for participation in a real estate venture. Partners may be limited or unlimited in their liability.

**Real Property** - Land, and generally whatever is erected upon or affixed thereto.

**Realization of Gain** - The taking of the gain or profit from the sale of property.

**Realtor** - A coined word which may only be used by an active member of a local real estate board, affiliated with the National Association of Real Estate Boards.

**Reconciliation** - The final stage in the appraisal process where the appraiser reviews the data and estimates the subject property's value.

**Recording** - The act of writing or entering in a book of public record instrument affecting the title to real property.

**Recourse** - The right to a claim against a prior owner of a property or note.

**Redemption** - The right of a mortgagor to redeem the property by paying a debt after the expiration date and before sale at foreclosure; the right of an owner to reclaim the owner's property after the sale for taxes.

**Red-Lining** - The refusal to lend money within a specific area for various reasons. This practice is illegal.

**Referee's Deed** - Used to convey real property sold pursuant to a judicial order, in an action for the foreclosure of a mortgage or for partition.

**Release** - The act or writing by which some claim or interest is surrendered to another.

**Release Clause** - A clause found in a blanket mortgage which gives the owner of the property the privilege of paying off a portion of the mortgage indebtedness, and thus freeing a portion of the property from the mortgage.

**Rem** - (See In Rem)

**Remainder** - An estate which takes effect after the termination of a prior estate, such as a life estate.

**Remainderman** - The person who is to receive the property after the termination of the prior estate.

**Rent** - The compensation paid for the use of real estate.

**Reproduction Cost** - Normal cost of exact duplication of a property as of a certain date.

**Restraint of Trade** - Business practices designed to restrict competition, create a monopoly, control prices and otherwise obstruct the free operation of business.

**Restriction** - A limitation placed upon the use of property contained in the deed or other written instrument in the chain of title.

**Reversionary Interest** - The interest which a grantor has in lands or other property upon the termination of the preceding estate.

**Revocation** - An act of recalling a power of authority conferred, as the revocation of a power of attorney; a license, an agency, etc.

**Right of Survivorship** - Right of the surviving joint owner to succeed to the interests of the deceased joint owner, distinguishing feature of a joint tenancy or tenancy by the entirety.

**Right-of-Way** - The right to pass over another's land pursuant to an easement or license.

**Riparian Owner** - One who owns land bounding upon a river or watercourse.

**Riparian Rights** - The right of a property owner whose land borders a natural water course, such as a river, to reasonable use and enjoyment of the water that flows past the property. Riparian literally means "riverbank."

## S

**Sales Contract** - A contract by which the buyer and seller agree to terms of sale.

**Satisfaction Piece** - An instrument for recording and acknowledging payment of an indebtedness secured by a mortgage.

**Second Mortgage** - A mortgage made by a home buyer in addition to an existing first mortgage.

**Seizin** - The possession of land by one who claims to own at least an estate for life therein.

**Setback** - The distance from the curb or other established line, within which no buildings may be erected.

**Situs** - The location of a property.

**Special Assessment** - An assessment made against a property to pay for a public improvement by which the assessed property is supposed to be especially benefitted.

**Specific Performance** - A remedy in a court of equity compelling a defendant to carry out the terms of an agreement or contract.

**Statute** - A law established by an act of the Legislature.

**Statute of Frauds** - State law which provides that certain contracts must be in writing in order to be enforceable at law.

**Statute of Limitations** - A statute barring all right of action after a certain period of time from the time when a cause of action first arises.

**Subagent** - An agent of a person already acting as an agent of a principal.

**Subdivision** - A tract of land divided into lots or plots.

**Subletting** - A leasing by a tenant to another, who holds under the tenant.

**Subordination Clause** - A clause which permits the placing of a mortgage at a later date which takes priority over an existing mortgage.

**Subscribing Witness** - One who writes his/her name as witness to the execution of an instrument.

**Surety** - One who guarantees the performance of another; guarantor.

**Surrender** - The cancellation of a lease by mutual consent of the lessor and the lessee.

**Surrogate's Court (Probate Court)** - A court having jurisdiction over the proof of wills, the settling of estates and of citations.

**Survey** - The process by which a parcel of land is measured and its area ascertained; also the blueprint showing the measurements, boundaries and area.

## T

**Tax Sale** - Sale of property after a period of nonpayment of taxes.

**Tenancy in Common** - An ownership of realty by two or more persons, each of whom has an undivided interest, without the "right of survivorship."

**Tenancy by the Entirety** - An estate which exists only between husband and wife with equal right of possession and enjoyment during their joint lives and with the "right of survivorship."

**Tenancy at Will** - A license to use or occupy lands and tenements at the will of the owner.

**Tenant** - One who is given possession of real estate for a fixed period or at will.

**Tenant at Sufferance** - One who comes into possession of lands by lawful title and keeps it afterwards without any title at all.

**Testate** - Where a person dies leaving a valid will.

**Tie-in Arrangement** - A contract where one transaction depends upon another.

**Title** - Evidence that owner of land is in lawful possession thereof; evidence of ownership.

**Title Insurance** - A policy of insurance which indemnifies the holder for any loss sustained by reason of defects in the title.

**Title Search** - An examination of the public records to determine the ownership and incumbrances affecting real property.

**Torrens Title** - System of title records provided by state law; it is a system for the registration of land titles whereby the state of the title, showing ownership and incumbrances, can be readily ascertained from an inspection of the "register of titles" without the necessity of a search of the public records.

**Tort** - A wrongful act, wrong, injury; violation of a legal right.

**Transfer Tax** - A tax charged under certain conditions on the property belonging to an estate.

## U

**Urban Property** - City property; closely settled property.

**Usury** - On a loan, claiming a rate of interest greater than that permitted by law.

## V

**Valid** - Having force, or binding force; legally sufficient and authorized by law.

**Valuation** - Estimated worth or price. The act of valuing by appraisal.

**Variance** - The authorization to improve or develop a particular property in a manner not authorized by zoning.

**Vendee's Lien** - A lien against property under contract of sale to secure deposit paid by a purchaser.

**Violations** - Act, deed or conditions contrary to law or permissible use of real property.

**Void** - To have no force or effect; that which is unenforceable.

**Voidable** - That which is capable of being adjudged void, but is not void unless action is taken to make it so.

## W

**Waiver** - The renunciation, abandonment, or surrender of some claim, right or privilege.

**Warranty Deed** - A conveyance of land in which the grantor warrants the title to the grantee.

**Water Rights** - The right of a property owner to use water on, under or adjacent to the land for such purposes as irrigation, power or private consumption.

**Will** - The disposition of one's property to take effect after death.

**Wraparound Loan** - A new loan encompassing any existing loans.

## **Z**

**Zone** - An area set off by the proper authorities for specific use; subject to certain restrictions or restraints.

**Zoning Ordinance** - Act of city or county or other authorities specifying type and use to which property may be put in specific areas.